

February 23, 1996

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Re: Village of West Salem
Case 11 No. 53392 MA-9342
(Schuppel grievance)

Gentlemen:

This letter is written to confirm an "expedited arbitration decision and Award with some supporting rationale" rendered by the undersigned in the above-entitled matter pursuant to an agreement by the parties at hearing on February 5, 1996 at the Village Hall, West Salem, Wisconsin. The hearing was not transcribed, and the parties made oral argument at the close of hearing.

At issue is whether the Village has just cause to place a written reprimand in Officer Robert Schuppel's personnel file. The Union argues that there is no just cause for the discipline while the Village takes the opposite position.

On May 24, 1995, Deborah A. Preston wrote a letter of complaint to the Village regarding the conduct of Officer Robert Schuppel, hereinafter the grievant, of the Village's Police Department. The complaint grew out of an investigation by the Village Police Department, principally by the grievant, regarding a drive-by shooting which occurred in the Village on or about February 25, 1995. Preston complained of "unacceptable conduct" and "physical abuse" of the grievant as well as "unacceptable advantage" taken by the grievant against the complainant's two minor children "when he knew parents were not home".

Because Police Chief Dennis Abbott was present at the incident giving rise to the complaint, the Village referred the matter for independent investigation by former LaCrosse County District Attorney Burleigh Randolph. Randolph held taped interviews with the complainant, members of her family, the grievant, Chief Abbott, the School principal and an Assistant District Attorney.

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In September, 1995, Randolph provided the Village Police Committee with a summary of interviews and a report of his conclusions of the investigation. Randolph found, in relevant part, regarding execution of the Capias:

Mrs. Preston describes his "attack": She was forced to the ground: Officer Schuppel banged her head into the wall, knocked the telephone out of her hand, and told her that she would not be allowed to call her attorney. Mr. Preston corroborates her story. Officer Schuppel confesses that he had his arms entirely around Mrs. Preston, attempting to remove the papers from her hand, but otherwise denies Mrs. Preston's version.

It is the opinion of this investigator, whatever description of the physical force used by Officer Schuppel, at whoever's description of the incident, none of it was appropriate. Officer Schuppel overreacted, and used excessive force.

The officers, in fact, trapped the Prestons into the action they took to attempt to read the document. Doing so under the circumstances was normal. Officer Schuppel handed the full document to Mr. Preston at his request, and then attempted to retrieve it by force. That action was not appropriate. The Preston surprise and insult is understandable.

Randolph recommended, in part, the following:

3. Credible evidence exists that Officer Schuppel used excessive and unnecessary force towards Mrs. Preston in his attempt to retrieve the Capias documents. Such conduct may, as you see fit warrant further attention.

4. I also note from Chief Abbott, that the previous night, the trail was cold, there was no emergency, and no reason to arrest Michael. The loss of patience by your police department, with the exercise by the Prestons of their legal rights is no basis or reason for precipitate action.

Based on this report, the Village Police Committee requested an executive session of the Village Board of Trustees to consider the matter of disciplinary action. The grievant and Chief Abbott were given copies of the summary and report and given the opportunity to respond in the executive session. The grievant was given the opportunity for union representation. Thereafter the Village Board of Trustees adopted a Resolution on October 25, 1995 which stated, in material

part:
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NOW, THEREFORE, BE IT RESOLVED, that the Village Board, after reviewing the matter concurs in the conclusions of the independent investigator report that Officer Schuppel's knowledge of the law was defective and he exceeded proper police procedures in taking the minor into custody; that Chief Abbott's supervision of the matter was defective in the knowledge of the law and judgment on the actions taken.

FURTHER RESOLVED, that a reprimand be placed in Officer Schuppel's personnel file along with a copy of this Resolution and a copy of the aforementioned summary and report with the warning that this Board considers them serious deficiencies, which, if repeated could result in discipline involving suspension and/or termination.

FURTHER RESOLVED, that Officer Schuppel is directed to enroll and complete, at non-compensated time, in an inservices training program approved by the Chief and the Police Committee and that the Police Chief draft for Police committee recommendation and Board approval, written operational policies extending to the areas which are the subject matter of the report.

On November 1, 1995, the Union filed a grievance on behalf of Officer Robert Schuppel complaining that the Village did not have proper cause to discipline the grievant. The parties stipulated that there are no procedural issues, and that the instant dispute is properly before the Arbitrator for a decision on the merits.

There are two basic and fundamental questions in any case involving just cause. One is whether the employe is guilty of the actions complained of, which the Village has the duty of so proving by a satisfactory preponderance of the evidence. If the answer to the first question is affirmative, the second basic question is whether the punishment is appropriate, given the offense.

The grievant testified at hearing that he put his arms around Deborah Preston from the back as she turned away from him and bent over in an attempt to prevent him from removing the papers (Capias and attached Affidavit) from her hands. He admitted brushing against her. When Preston turned around to face him, the grievant grabbed the papers out of her hands. At or about this same point, Chief Abbott told the grievant to back off, and the officers soon left the home.

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This testimony is consistent with the independent investigator's findings and, in fact, the Union admits to the conduct in question. The Union argues, however, that there was no physical contact or "excessive force" and, therefore, no basis for discipline. The Arbitrator disagrees. The grievant basically enveloped Mrs. Preston in his grasp and reached around her with both hands in an attempt to remove the papers from her grasp. He then forcibly removed the papers from her hands when she turned back toward him. The independent investigator found that the grievant acted improperly during this incident, and the Village Board concurred. Board members testified at hearing that they found the grievant's conduct "too aggressive", "not proper", exceeded proper police procedures, resulted in physical contact and that discipline was warranted. The Arbitrator can find no persuasive basis in the record to disagree with the Village's conclusions that the grievant acted improperly and that his confrontational approach to the situation was inappropriate.

The other charge against the grievant is that he misunderstood the law when investigating the drive-by shooting and arresting Michael Preston. However, based on the independent investigator's report concluding same, the LaCrosse County District Attorney's letter questioning same and Chief Abbott's vigorous denial that knowledge of the applicable law was lacking, the Arbitrator must conclude that evidence on this point is mixed and the Village did not prove that the grievant was guilty of same. Therefore, based on all of the foregoing, the Arbitrator finds that there is some basis on which to discipline the grievant. The remaining question is whether the punishment is appropriate for the offense.

A review of this question may be undertaken within the context of the other issues raised by the Union in arguing against the written reprimand.

The Union first argues that the Prestons' confrontational approach inflamed the situation. That may be. However, it does not provide an excuse for improper conduct by the grievant, and this argument of the Union is rejected.

The Union next argues that the penalty imposed did not take into consideration the grievant's good work record (no prior discipline). The Arbitrator agrees. While the record indicates that the Village Board considered, and rejected, more serious discipline like suspension, there is no persuasive evidence in the record that the Village Board considered that the grievant had no prior formal discipline at any time material herein before imposing a written reprimand on him.

Also troublesome is the fact that the Village failed to put the grievant on notice that he faced possible discipline for the conduct complained of. In this regard, Chief Abbott testified unrefuted by the Village that the grievant was following his lead in protecting the names of juveniles when he attempted to get the papers back from Mrs. Preston on the date in question,

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that the grievant did not use excessive force against the Prestons, that the grievant's actions did not violate any departmental rules by his actions and that the grievant did not deserve any discipline for his conduct.

Based on all of the above, the Arbitrator finds that while the Village has some factual basis upon which to discipline the grievant (although not as much as claimed by the Village), the Village committed a serious procedural error in failing to give the grievant proper notice that he faced possible discipline for the conduct complained of. In addition, the Village failed to take into consideration the grievant's lack of prior discipline before imposing the written reprimand. Therefore, the Arbitrator finds it reasonable to conclude that the answer to the stipulated issue is NO, the Village did not have just cause to place a written reprimand in Officer Robert Schuppel's personnel file.

A question remains as to the appropriate remedy.

This is a close question. The grievant acted improperly, however, there are mitigating circumstances. The Arbitrator finds it appropriate, based on the entire record, to reduce the written reprimand to a verbal warning. A copy of this Award may be placed in the grievant's personnel file in order to remind the grievant of the Village's expectations regarding his conduct as a police officer. The Village may also provide a copy to the Police Chief to accomplish same.

Having sustained in part, and denied in part, the grievance, this matter is dismissed.

Dated at Madison, Wisconsin this 23rd day of February, 1996.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

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